

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.
	)	
ARVINMERITOR, INC.,	)	
	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

**STATEMENT OF THE CASE**

1. This is a civil action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607. The United States seeks the recovery, pursuant to CERCLA Section 107, 42 U.S.C. § 9607, of costs incurred responding to the release or threat of release of hazardous substances at the Rockwell International Superfund Site ("Site") at 1 Glass Street in Allegan, Michigan. The United States also seeks prejudgment interest, pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a). Finally, the United States seeks a declaration, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that the Defendant is liable for future response costs that may be incurred in connection with the Site.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 107 and 113(b), 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), because the claims arose in this district and the threatened and actual releases of hazardous substances occurred in this district.

### DEFENDANTS

4. Defendant ArvinMeritor, Inc. (“ArvinMeritor” or “Defendant”) is a Michigan corporation with its principal place of business located at 2135 West Maple Road, Troy, Michigan 48084-7186. ArvinMeritor is a corporate successor of the automotive division of Rockwell International Corporation (“Rockwell”), which in turn was the corporate successor of various other entities that owned and/or operated at the Site dating back to 1914. ArvinMeritor was formed by the merger of Arvin Industries and Meritor Automotive, which had previously been formed as a spin-off of the Rockwell automotive division.

5. The Defendant is a “person” within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607.

6. ArvinMeritor is a person (or a successor of a person) who owned or operated the Site at the time of disposal of hazardous substances at the Site, within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

## BACKGROUND

7. The Rockwell International Superfund Site covers approximately 30 acres at 1 Glass Street in Allegan, Michigan and inside a bend of the Kalamazoo River ("River"). The Site is bordered on the north by the River, on the east by River Street, on the south by North Street, and on the west by the City of Allegan's ("City" or "Allegan") wastewater treatment plant.

8. The Site has been used for manufacturing facilities since approximately 1908. ArvinMeritor's corporate predecessors manufactured automobiles, universal joints, and drive trains at the Site between approximately 1914 and 1988. ArvinMeritor's corporate predecessors continued to own portions of the Site until 1996.

9. According to a consultant's report commissioned by a corporate predecessor of ArvinMeritor, the Defendant's corporate predecessors, *inter alia*, caused an oil sheen on the Kalamazoo River in 1975 and 1993, discharged oily wastewater to the Kalamazoo River and its backwaters from the 1930s to the 1960s, built a pond for soluble oil waste and periodically burned off oil that had separated at the top of the pond, and used transformers and capacitors on the Site with oils containing polychlorinated biphenyls ("PCBs") into the 1980s, which likely resulted in the PCBs entering the soil at the Site.

10. EPA has found a number of hazardous substances at the Site, including PCBs, compounds such as phenanthrene and perchloroethylene, and metals such as chromium, iron, and lead. Each of these substances has been designated a hazardous substance by EPA at 40 C.F.R. § 302.4 pursuant to CERCLA Section 102(a), 42 U.S.C. § 9602(a).

11. The Site was placed on the National Priorities List in July 1987.

12. “Hazardous substances” as defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), have been “released” at the Site within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22), or there have been threats of such releases into the environment within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22).

13. The Site is a “facility” within the meaning and scope of CERCLA Section 101(9), 42 U.S.C. § 9601(9), because it is an area where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

14. On July 14, 1988, EPA entered an administrative order on consent with Rockwell calling for Rockwell to conduct a Remedial Investigation and Feasibility Study (“RI/FS”). After rejecting several drafts, EPA took over the RI/FS development in April 1998.

15. On September 30, 2002, after completing the RI/FS, EPA signed a Record of Decision (“ROD”), providing for a remedial action at the Site, and issued a Unilateral Administrative Order (“Remedial UAO”) to ArvinMeritor, directing it to design and implement the remedy memorialized in the ROD.

16. EPA also issued a Unilateral Administrative Order (“Removal UAO”) on August 9, 2001 directing ArvinMeritor to respond to releases of hazardous substances into neighboring areas from the Site.

17. EPA incurred costs in preparing the RI/FS and overseeing ArvinMeritor’s efforts in mitigating the releases or threats of release of hazardous substances at the Site. EPA is continuing to incur response costs due to the ongoing work and the enforcement efforts of the United States.

18. The United States made a demand for payment of its response costs to ArvinMeritor on or about March 28, 2003. ArvinMeritor has yet to pay those costs.

## CLAIM FOR RELIEF

### (Recovery of Costs Under CERCLA Section 107, 42 U.S.C. § 9607)

19. Paragraphs 1-18, above, are realleged and incorporated herein by reference.
20. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides in pertinent part that:
  - (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which hazardous substances were disposed of

\* \* \* \*

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for

--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . .

21. CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), provides in pertinent part:
  - (2) Actions for recovery of costs

\* \* \* \*

In any . . . action [for recovery of costs] . . . , the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

22. ArvinMeritor is a person (or a successor to a person) who owned or operated the Site at the time of disposal of hazardous substances at the Site, within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

23. There have been releases and threatened releases of hazardous substances at and from the Site, within the meaning of CERCLA Section 107(a), 42 U.S.C. § 9607(a).

24. The releases and threatened releases at the Site have caused the United States to incur costs of response actions within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25).

25. As of April 30, 2006, the United States' unreimbursed response costs for the Site totaled \$3,730,760.35. The United States will continue to incur response costs for the Site, including administrative and enforcement costs.

26. The response costs incurred by the United States to date at the Site were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

27. ArvinMeritor is liable to the United States under CERCLA Sections 107(a)(2) and 113(g)(2), 42 U.S.C. §§ 9607(a)(2) and 9613(g)(2), for all unreimbursed costs incurred and to be incurred by the United States in responding to the releases and/or threats of releases of hazardous substances at the Site, including enforcement costs and prejudgment interest on such costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America prays that this Court:

A. Enter judgment in favor of the United States against ArvinMeritor under CERCLA Section 107(a), 42 U.S.C. § 9607(a), finding ArvinMeritor liable for all unreimbursed costs, including prejudgment interest, that the United States has incurred in responding to releases and/or threatened releases of hazardous substances at and from the Site to the date of judgment;

B. Enter a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613 (g)(2), finding ArvinMeritor liable for all future response costs incurred by the United States following judgment, in responding to releases and/or threatened releases of hazardous substances at the Site;

C. Award the United States its costs of this action; and

D. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

RONALD J. TENPAS  
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Division  
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Date: \_\_\_\_\_

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